

TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.

EXECUTIVE ORDER NO. 96-17

**RELATIVE TO AN EMERGENCY DECLARATION
PROMULGATING AMENDED INTERIM RULES AND
REGULATIONS FOR THE CUSTOMS, AGRICULTURE AND
QUARANTINE INSPECTION SERVICES CHARGE.**

WHEREAS, in accordance with Section 9302 of Title V, Guam Code Annotated, and pursuant to Government Code Section 47149, as amended by Public Law 23-96, the attached amended Interim Rules and Regulations governing the Customs, Agriculture and Quarantine Inspection Services Charge are hereby adopted as emergency rules and regulations based on the following findings:

1. Section 18 of Chapter III of Public Law 23-45 (Government Code Sections 47143, *et. seq.*) mandates the collection of a customs, agriculture and inspection service charge by the Antonio B. Won Pat Guam International Airport Authority ("GIAA") and the Customs and Quarantine Agency ("CQA") upon all air and sea carriers, including certain initial statutory rates.
2. On March 13, 1996, formal notice of the implementation of the Government Code Sections 47143 *et. seq.* was given by the GIAA to all air carriers subject to the service charges, a copy of which is attached hereto as Exhibit "A". Said notice advised the carriers that the initial service charges were subject to adjustment upon the adoption of interim and final rules and regulations.
3. Government Code Section 47149 authorizes the Director of Customs and Quarantine Agency to promulgate rules and regulation to implement Government Code Sections 47143 *et. seq.*, including rules governing the procedure for collection of the service charges, for periodic review of the costs of providing inspection services and the level of charges levied, and other matters.
4. On April 15, 1996, interim rules and regulations were adopted by the Director of CQA and promulgated pursuant to Executive Order No. 96-10 as emergency rules and regulations. A Supplemental Notice of Amendment of GIAA's Airport Tariff Schedule was also given to all air carriers, a copy of which is attached hereto as Exhibit "B".
5. On May 8, 1996, Government Code Sections 47143, 47144, 47145, 47149 and 47150 were amended to clarify the intent of Public Law 23-45 and to modify the interim rates in response to the objections of several air carriers who maintained in correspondence with the Federal Aviation Administration ("FAA") that the initial rates were excessive and that the service charges violated the Federal Anti-Head Tax Act, 49, U.S.C. §40116 ("AHTA").



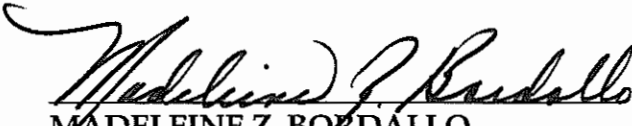
6. The FAA Airports District Officer, Western-Pacific Region, U.S. Department of Transportation ("DOT"), in letter dated November 13, 1995 and January 16, 1996, copies of which are attached hereto as Exhibits "C" and "D", responded to the air carriers' inquiries advising that the terms of Government Code Section 47143 *et. seq.* were not in conflict with the AHTA, as the service charges to be levied on aircraft operators are only intended to recover the costs of providing inspection services and facilities at the Antonio B. Won Pat Guam International Air Terminal ("GIAT").
7. The FAA letters further state relative to the reasonableness of the service charges that if the charge amounts exceed the actual cost of providing inspection services, the charges might be considered a prohibited tax under the AHTA and, further that payment of excess service charges might be considered a prohibited use of airport revenue under 49 U.S.C. §47107(1)(2)(A).
8. To avoid violation of the aforesaid federal laws, the FAA Airports District Officer advised that "the GAA and GCQA must assure that the level of the service fees do not exceed the costs of providing inspection services at GUM". Exhibit "C" at 2.
9. Notwithstanding the foregoing FAA letters, the air carriers continued to question both the validity and amount of the service charges and threatened to file an administrative or judicial complaint challenging the program.
10. In an effort to forestall costly and time consuming litigation, counsel for the air carriers and for the government of Guam entered into discussions with representatives of the FAA and DOT, culminating in the formulation of a Letter of Understanding between the government of Guam and the air carriers dated June 14, 1996, and advisory letters from the DOT and FAA both dated June 18, 1996, copies of which are attached hereto as Exhibits "E", "F", and "G".
11. As confirmed in the Letter of Understanding dated June 14, 1996 (Exhibit "E"), the air carriers and the government of Guam have agreed to abide by the views expressed in the FAA/DOT letters as to the legality of the service charges and manner in which the carriers may collect the charges from their passengers.
12. Immediate adoption of the attached Amended Interim Rules and Regulations on an emergency basis is necessary to comply with, and abide by, the foregoing FAA/DOT letters concerning the application of federal law to the service charge program.
13. In consideration for the promulgation of the Amended Interim Rules and Regulations, the air carriers have pledged and agreed never to challenge the service charge program under any U.S. federal or other law or regulation, or to challenge the amount of the initial service charges for the first year, and if an action is filed the signatory carriers will seek to intervene in support of the government of Guam. The carriers have further agreed to pay all service charges due from the effective date of April 13, 1996, provided the attached Amended Interim Rules and Regulations are promulgated by June 30, 1996.



NOW, THEREFORE, I, MADELEINE Z. BORDALLO, Acting Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, and the laws of Guam, do order:

- 1) The Amended Interim Rules and Regulations attached hereto as Exhibit "H" are effective April 13, 1996 and supercede and replace interim rules and regulations promulgated by Executive Order 96-10.
- 2) The rules and regulations, as amended and promulgated by this Executive Order 96-17, shall be promulgated by the Director of the Customs and Quarantine Agency according to Section 47149 of the Government Code enacted in Section 18 of Chapter III of Public Law 23-45.
- 3) Executive Order 96-10 is rescinded.

SIGNED AND PROMULGATED at Agaña, Guam this 27th day of June 1996.


MADELEINE Z. BORDALLO
Acting Governor of Guam

COUNTERSIGNED:


TED S. NELSON
Acting Lieutenant Governor of Guam



COMMONWEALTH NOW!



GUAM AIRPORT AUTHORITY

(ATURIDAT PUETTON BATKON AIREN GUAHAN)

P.O. Box 8770, Tamuning, Guam 96931 • Telephone: 646-0300, 646-0301, 646-0302
Fax: (671) 646-8823

MEMORANDUM

TO: All Aircraft Owners & Operators

FROM: Executive Manager

SUBJECT: Amendment of Airport Tariff Schedule (P.L. 23-45)

DATE: March 13, 1996

NOTICE IS HEREBY GIVEN, pursuant to Government Code Section 47143 (P.L. 23-45) and Sections 1.01.03.01 and 1.08 of the Terminal Rules and Regulations of the Guam Airport Authority, that effective April 13, 1996, each aircraft landing at the A.B. Won Pat Guam International Airport will be levied a Customs, Agriculture and Quarantine Inspection Services Charge reasonable related to the costs of the services provided to the carriers. The charge shall be paid in U.S. currency to the Authority at the office of its Treasurer/Controller on a monthly basis no later than the fifteenth (15th) day of the month following the month in which the services were provided, pursuant to monthly billings provided by the Authority of the various charges and fees payable pursuant to Article XIV of the Terminal Rules and Regulations. Pending the adoption of interim and final rules and regulations by the Director of Customs and Quarantine Agency, pursuant to Government Code Section 47149, the service charge shall be determined based on the initial rates set forth in Government Code Section 47144(a).

Attached hereto is a copy of the amended Airport Tariff Schedule, reflecting the addition of the Customs, Agriculture and Quarantine Inspection Services Charge.

Sincerely,

GILBERT E. ROBLES
Acting Executive Manager

ATTACHMENTS



EXHIBIT "A"

EXHIBIT "A"



GUAM INTERNATIONAL AIRPORT GUAM AIRPORT AUTHORITY P.O. Box 88770, Tamuning, Guam 96931 Telephone: (671) 646-0300 thru 0302 Fax: (671) 646-8823

AIRPORT TARIFF SCHEDULE

The following Airport Tariff Schedule reflects the rates, fees and charges established by GAA's Rules and Regulations. The Rules and Regulations, as the prevailing source document, shall govern any conflicts or disputes hereunder.

Airport Tariff Schedule rates, fees and charges established by GAA's Rules and Regulations for Commuter and General Aviation operations at the Air Terminal Annex (Old Terminal) are effective March 1, 1992.

CLASSES OF AIRCRAFT

CLASS I Aircraft having certified gross take-off weight (GTOW) of thirty thousand (30,000) pounds or more.

CLASS II Aircraft having certified GTOW of less than thirty thousand (30,000) pounds.

1. AIRFIELD USE CHARGE

(Source: Section 14.02)
Effective Oct. 1, 1995

Signatory & Non-Signatory	
Main Terminal	Thirty six cents (\$.36) per 1000 pounds of certified GTOW for each landing.
Class II & Commuter Facility	Seven dollars and fifty cents (\$7.50) for each landing.

2. APRON/GATE USE CHARGE

(Source: Section 14.03)

Signatory & Non-Signatory	
Main Terminal	Thirty six cents (\$.36) per 1000 pounds of certified GTOW for each landing.
Class II	One dollar and fifty cents (\$1.50) for each use with four (4) hours maximum.
Commuter Facility	Five cents (\$.05) per 1000 pounds GTOW for each use with two (2) hours maximum.

3. LOADING BRIDGE USE CHARGE

(Source: Section 14.03.01)

Signatory & Non-Signatory	Sixty Five Dollars and fifty eight cents (\$65.58) each use
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4. AIRCRAFT PARKING CHARGE

(Source: Section 14.05)

Signatory & Non-Signatory	
Main Terminal	Thirty six cents (\$.36) per 1000 pounds of certified GTOW for each 24 hour period or fraction thereof. Assessed 6 hours after landing.
Class II & Commuter Facility	One dollar and seventy-five cents (\$1.75) for each twenty four hour period or a fraction thereof assessed six hours after landing.

5. FUEL FACILITY USE CHARGE

(Source: Section 14.09)

Signatory	By Operating Agreement: Quarter of a cent (\$.0025) per gallon of fuel taken on payable to the fueling system operator.
Non-Signatory	Two and a quarter cents (\$.0225) per gallon of fuel taken on payable to the fueling system operator.

6. IMMIGRATION INSPECTION FEES

Effective Oct. 1, 1995

Signatory & Non-Signatory	
Main Terminal	Fifty one cents (\$.51) per international arriving passenger.

7. ARRIVAL FACILITY SERVICE CHARGE

(Source: Section 14.06)

Charge effective Oct. 1, 1995

Signatory & Non-Signatory	
Main Terminal	One dollar and nine cents (\$1.09) per terminating or arriving passenger, in lieu of rent.
Commuter Facility	Fifty cents (\$.50) per arriving passenger or Two dollars and fifty cents (\$2.50) per aircraft, whichever is greater.

8. DEPARTURE FACILITY SERVICE CHARGE

(Source: Section 14.07 & 14.07.01)

Signatory & Non-Signatory	
Main Terminal	One dollar and thirteen cents (\$1.13) per enplaned passenger, in lieu of rent. Excludes security inspection services.
Commuter Facility	Seventy-five cents (\$.75) per enplaned passenger or Three dollars and seventy-five cents (\$3.75) per aircraft, whichever is greater.

9. IN-TRANSIT FACILITY SERVICE CHARGE

(Source: Section 14.08)

Main Terminal & Commuter	Ninety cents (\$.90) per in-transit passenger in lieu of rent, or Ten dollars (\$10.00) per flight, whichever is greater.
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10. WASTE DISPOSAL FACILITY USE CHARGE

(Source: Section 14.10)

Main Terminal & Commuter	Charge for use is set by and payable to the waste disposal facility operator.
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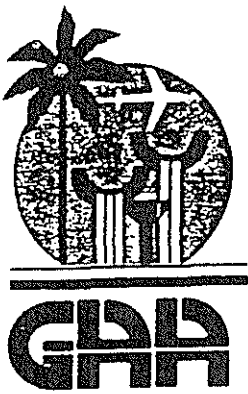
GUAM INTERNATIONAL AIRPORT

GUAM AIRPORT AUTHORITY
P.O. Box 66770, Tamuning, Guam 96931
Telephone: (671) 646-0300 thru 0302 Fax: (671) 646-8823

AIRPORT TARIFF SCHEDULE

OTHER RATES, FEES, CHARGES

11. CATERING FEE (Source: Section 14.12)		Monthly fee equal to five percent (5%) of gross monthly billings from supplier of in-flight food and beverage. Excluded is in-flight catering provided directly by bonafide airline tenant.
12. RAMP VEHICLE DECAL CHARGE (Source: Section 1.08 & 2.05)		Five dollars (\$5.00) per decal per annum
13. TOUR BUS FACILITY CHARGE (Source: Section 14.13)		(Apr. 1) 1995 Three dollars (\$3.00) per passenger
14. VEHICLE PERMIT CHARGE Applies to Tour & Courtesy Vehicles (Source: Section 14.14) For vehicles used in the commercial carriage of persons to and from the passenger terminal, the following annual permit fees shall apply based on the seating capacity of each vehicle:	1 to 10 passengers	Twenty-five dollars (\$25.00) per vehicle
	11 to 20 passengers	Thirty-five dollars (\$35.00) per vehicle
	21 to 30 passengers	Forty-five dollars (\$45.00) per vehicle
	31 to 40 passengers	Fifty-five dollars (\$55.00) per vehicle
	41 to 50 passengers	Sixty-five dollars (\$65.00) per vehicle
	Over 50 passengers	Seventy-five dollars (\$75.00) per vehicle
15. TAXICAB PERMIT CHARGE (Source: Section 14.14)		Twenty-five dollars (\$25.00) per vehicle
16. RESERVED PARKING DECAL CHARGE (Source: Section 14.15.01) Authorized Airlines, commercial operators and tenants effected only.		1983 Five dollars (\$5.00) per decal per annum
		(Apr. 1) 1995 Twenty-five dollars (\$25.00) per decal per annum
17. EMPLOYEE PARKING DECAL CHARGE (Source: Section 14.15) Magnetic Parking Card - Replacement for unaccountable card		Charges are annually for each employee parking decal issued to employees of tenants or concessionaires who use designated employee parking facilities.
		(Oct. 1) 1991 Fifteen dollars (\$15.00) per annum per decal
		Magnetic Parking Card Ten dollars (\$10.00) each non-refundable deposit One hundred dollars (\$100.00) each
18. SECURITY IDENTIFICATION BADGE CHARGES Charges for Security I.D. badges which are stolen, lost, and/or replaced are posted at GAA's Security Division.		New Badge Ten dollars (\$10.00) each for processing
		Renewal Ten dollars (\$10.00) each for processing
		Change of status Ten dollars (\$10.00) each for processing
19. CUSTOMS, AGRICULTURE AND QUARANTINE INSPECTION SERVICES CHARGE (Source: P.L. 23-46) Charge effective April 13, 1996		Ten Dollars (\$10.00) per arriving passenger.
		Five Dollars (\$5.00) per consignment of air cargo.



GUAM AIRPORT AUTHORITY

(ATURIDAT PUETTON BATKON AIREN GUAMAN)

P.O. Box 8770, Tamuning, Guam 96931 • Telephone: 646-0300, 646-0301, 646-0302
Fax: (671) 646-8823

April 15, 1996

MEMORANDUM

TO: All Aircraft Owners and Operators

FROM: Executive Manager

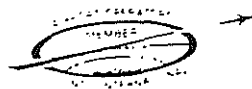
SUBJECT: Amendment of Airport Tariff Schedule (P.L. 23-45)
(Supplemental Notice)

On March 13, 1996, notice of implementation of the Customs, Agriculture, and Quarantine Inspection Services Charge was given by the Authority together with an amended Airport Tariff Schedule reflecting the initial service charge rates. The Notice provided that the service charge was subject to the adoption of interim and final rules and regulations by the Director of Customs & Quarantine Agency, pursuant to Government Code Section 47149.

NOTICE IS HEREBY GIVEN, pursuant to Government Code Section 47143 (P.L. 23-45) and Sections 1.01.03.01 and 1.8 of the Terminal Rules and Regulations of the A.B. Won Pat Guam International Airport Authority, that on April 13, 1996 Interim Rules and Regulations were adopted pursuant to Executive Order No. 96-10. A copy of the Interim Rules and Regulations are attached hereto and made a part hereof.

In lieu of a per passenger rate or charge, the annualized cost of providing, maintaining, and operating the service charge facilities as they relate to air carrier operations, excluding air cargo operations, has been determined by the Director of Customs & Quarantine Agency to be the sum of \$7,136,848.00 of the current fiscal year. Pursuant to Section III (A)(2) of the Interim Rules and Regulations, the annualized cost has been divided by 12 and the average monthly cost of \$594,737.33 shall be apportioned among the several air carriers each month in proportion to each carrier's respective percentage of passenger volume subject to the services. This apportionment methodology corresponds to the methodology previously used by the Customs & Quarantine Agency to apportion and collect reimbursement of overtime costs from the carriers.

EXHIBIT "B"



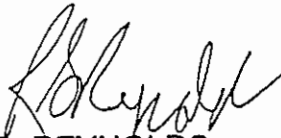
All Aircraft Owners & Operators

Page 2

April 15, 1996

Attached hereto is a copy of the Amended Airport Tariff Schedule referencing the new service charge methodology. The charges is effective April 13, 1996, formal notice of which (copy enclosed) was given by the Authority to all air carriers on March 13, 1996.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R.G. Reynolds', is written over the typed name.

R.G. REYNOLDS
EXECUTIVE MANAGER

Attachments

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AIRPORT TARIFF SCHEDULE

19. CUSTOMS, AGRICULTURE AND
QUARANTINE INSPECTION
SERVICES CHARGE

Source: P.L. 23-45
Change Effective: 04/13/96

\$594,737.33 per month to be
apportioned according to
each carrier's respective
percentage of passenger
volume, as provided in
Section III of CQA Interim
Rules & Regulations



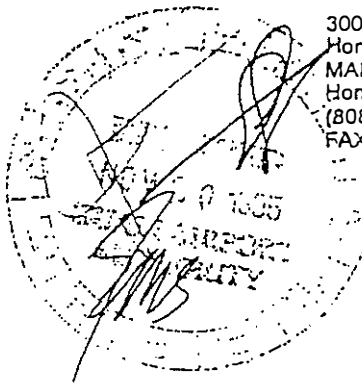
U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports District Office

300 Ala Moana Blvd., Rm. 7116
Honolulu, HI 96813
MAIL: Box 50244
Honolulu, HI 96850-0001
(808) 541-1230
FAX: (808) 541-3462

November 13, 1995

Mr. Rickie G. Reynolds
Executive Manager
Guam Airport Authority
Commonwealth of Guam
PO. Box 8770
Tamuning, GU 96931



Dear Mr. Reynolds:

This letter responds to your request for the Federal Aviation Administration (FAA) review of recently enacted legislation establishing a customs and agricultural inspection service fee to be collected by the Guam Airport Authority (GAA) at the Guam International Airport Terminal (GUM), Agana, Guam. Based on our review of the legislation and information currently available, the legislation does not appear to be facially inconsistent with Federal requirements governing generation and use of revenue at publicly-owned airports. However, I want to take this opportunity to alert you to FAA concerns regarding implementation of the legislation.

As enacted, the legislation authorizes the GAA to assess and collect from air carriers landing at GUM a service charge for customs and inspection services provided at GUM (\$47145). The legislation further authorizes the GAA to reimburse the Guam Customs and Quarantine Agency (GCQA) and Department of Agriculture for the costs of performing the various inspections at GUM and to apply the service charge to pay for those costs (\$47146). The legislation further authorizes the Director of the GCQA to promulgate rules and regulations governing the service charges, including provisions establishing periodic review of the costs of providing the services and of the level of charges levied (\$47149). The legislation also establishes an initial service fee of \$10 per passenger and \$5.00 per consignment of air cargo, "[u]ntil the first rules and regulations required by §47149 have been promulgated and based on a preliminary assessment of the actual costs" of the services provided (\$47144).

The FAA has considered the legislation in light of the Anti-Head Tax Act, 49 U.S.C. § 40116 (AHTA). The AHTA generally prohibits state and local taxation of air commerce, passengers traveling in air commerce and the sale of air transportation. The AHTA excludes from this prohibition reasonable landing fees, rental charges and other service charges paid by aircraft operators for using airport facilities. The FAA has also considered the legislation in light of AIP grant assurances requiring that revenues generated by an AIP obligated airport be used for the capital and operating costs of the airport, 49 U.S.C. § 47107(b). Based on provisions of the FAA Authorization Act of 1994, Pub. Law 103-305 (August 23, 1995), payments by an airport sponsor other than payments

EXHIBIT "C"

reflecting the value of services and facilities provided to the airport are to be considered a prohibited use of airport revenue, 49 U.S.C. § 47107(1)(2)(A).

Based on the terms of the legislation it appears that the service charge is intended to be imposed on aircraft operators to recover the costs of providing inspection services and facilities at GUM. The FAA notes that the initial charges are based on preliminary estimates of costs and are to stay in effect only until a rulemaking establishing costs and fee levels is completed. If implemented as intended, the legislation does not appear to conflict with the AHTA or with the requirements for the use of airport revenue. Accordingly, the FAA has no basis for objecting to the legislation at this time.

However, if the service charges exceeded the actual costs of providing the inspection services at the GUM, the service charges might be considered to be a prohibited tax under the AHTA. Moreover, in these circumstances, the payment of the service charge revenue by the GAA to the Guam Customs and Quarantine Agency and Department of Agriculture might be considered a prohibited use of airport revenue under 49 U.S.C. § 47107(1)(2)(A). In other words, to avoid a conflict with these Federal requirements, the GAA and GCQA must assure that the level of the service fees do not exceed the costs of providing inspection services at GUM.

Therefore, the FAA strongly recommends that the GCQA promptly complete initial rulemaking to establish the costs of providing the inspection services and to establish the level of the inspection fees and that the GCQA review costs and fee levels on a regular basis.

Please call if you have any questions or require further information.

Sincerely,



Howard S. Yoshioka
Manager, Airports District
Office



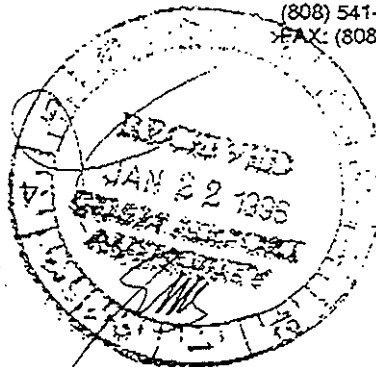
U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports District Office

300 Ala Moana Blvd., Rm. 7116
Honolulu, HI 96813
MAIL: Box 50244
Honolulu, HI 96850-0001
(808) 541-1230
FAX: (808) 541-3462

January 16, 1996

Mr. Kevin J. Johnson
Corporate Counsel and Assistant Secretary
Department A1180
5101 Northwest Drive
St. Paul, Minnesota 55111-3034



Dear Mr. Johnson:

Reference is made to your letter of December 4, 1995, regarding the Guam Customs, Agriculture, and Quarantine services charge (Guam User Fee) levied at Guam International Airport, Agana, Guam. Our letter of November 13, 1995, was based upon a review of the legislation which concluded the following with respect to the reasons raised in your letter:

Reason 1.A. - "The legislation and regulations which implement the Guam User Fee show that the Guam User Fee related to passengers is, on its face, a head tax."

Section 40116(b) of 49 U.S.C. 40101 prohibits a State or political subdivision of a State from levying or collecting a tax, fee, head charge or other charge on an individual traveling in air commerce. A review of the legislation authorizing the Guam User Fee determined that it did not define the fee in a way which fit section 40116. The fee is levied on the aircraft, and based on the number of passengers which are on the aircraft.

Reason 1.B. - "The Anti Head Tax Act prohibits Guam from imposing the Guam User Fee as to Passengers."

The Guam User Fee is levied on an aircraft and is not levied on an individual. The prohibition in 49 U.S.C. 40116 is defined as levied on a person, the air fare, the sale, or the gross receipts from air commerce. The Guam User Fee has been determined to not be a head tax.

Reason 1.C. - "The anti-Head Tax Act prohibits Guam from imposing the Guam User Fee as to cargo."

Section 40116(2)(A) prohibits a State from assessing or levying a tax on property, but the property is the property of the air carrier. The property carried by an air carrier is not what is referred to. The Guam User Fee as it refers to cargo is not prohibited by the Anti-Head Tax Act.

Reason 1.D. - The Guam User Fee is not a permitted "Service Charge" under subsection (e) of the Anti-Head Tax Act."

Your letter states that subsection (b) contradicts and makes illegal section (e). Section (e) is speaking of services and taxes that are normally collected by local governments from individuals in their jurisdictions. Section (b) speaks of taxes levied on travelers and air carriers. The subject of each section is different.

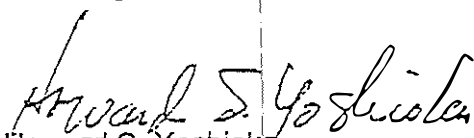
The reasonableness of the fees is questioned. The actual cost of providing the services is not known at this time. The initial rate will be adjusted by regulation as the cost of the services becomes known. The actual adjustment of the service charge to reasonably relate to actual costs should be audited under the authority of the single audit act. The procedure is considered to be reasonable and proper.

Reason 2. - "The conditions placed upon the Guam User Fee in the FAA letter of November 13, 1985, do not save the Guam User Fee from the prohibitions of the Anti-Head Tax Act."

Our letter indicated that the anti head tax act may be violated if the fees collected were higher than the actual cost of the services rendered. It urged the Guam Airport Authority to determine the cost of the services and to adjust the fees as soon as possible. Regulations to this effect should be promulgated as soon as possible to avoid the possibility of conflict with Section 40116.

Based on the above, a change in the FAA position regarding the Guam User Fee is not considered to be necessary at this time. Please advise if we can be of further assistance.

Sincerely,



Howard S. Yoshioka
Manager, Airports District Office

/cc: GAA (Reynolds)

June 14, 1996

The Honorable Carl T.C. Gutierrez
Governor
GUAM

Dear Governor Gutierrez:

This letter confirms the understanding between the Governor of Guam, acting on behalf of the Guam Customs and Quarantine Agency and the Guam International Airport Authority, and the undersigned carriers regarding the Customs, Agricultural and Quarantine Inspection Services Charge imposed by the Government of Guam effective April 13, 1996 (the "Fee").

The carriers and the Governor have sought and agree to abide by the views to be expressed in letters to the carriers from the U.S. Federal Aviation Administration ("FAA") and the U.S. Department of Transportation ("DOT") on the legality of the Fee and on the manner in which the carriers may collect the Fee from their passengers in a form and manner substantially similar to those attached hereto and made a part hereof.

The Governor agrees to have promulgated no later than June 30, 1996 an amendment (the "Amendment") to the Interim Rules and Regulations for the Customs, Agriculture, and Quarantine Inspection Services Charge, effective April 13, 1996, which establish the mechanism by which the Fee is imposed. The Amendment will provide that based on the current annual cost to the Government of Guam of providing customs and agriculture inspection services, which cost will be divided by 12, the Government will establish, based on the previous year's average monthly passenger volume, a fixed amount which will enable the carriers to assess each passenger.

Upon promulgation of the Amendment, the carriers agree not to challenge under any U.S. Federal or other law or regulation the imposition of the Fee. In addition, the carriers agree not to challenge the amount of the Fee for the first year. In the event an action is brought against the Government of Guam challenging the imposition of the Fee, each carrier also shall seek leave to intervene in the action and, if granted such leave, will support the position of the Government of Guam against a challenge that the Fee violates the Anti-Head Tax Act, 49 U.S.C. § 40116. The carriers further agree that upon promulgation of the Amendment by June 30, 1996, the carriers will pay to the Government of Guam when due, without penalty or interest, all Fees accrued from April 13, 1996 to the effective date of the

EXHIBIT "E"


The Honorable Carl T.C. Gutierrez
June 14, 1996
Page 2

Amendment, and will promptly pay when due all Fees billed thereafter.


If the Governor fails to promulgate the Amendment by June 30, the carriers reserve whatever right they may have to challenge the Fee under U.S. Federal or other law before the U.S. Department of Transportation or court of competent jurisdiction.

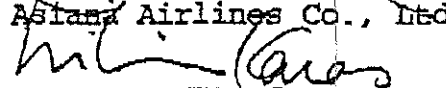
If this letter accurately reflects the understanding between the Governor and the undersigned carriers, please so indicate by signing and dating both copies of this letter in the place indicated below and returning one copy to Lynn Bonde at the following address: Ginsburg, Feldman & Bress, 1250 Connecticut Avenue, N.W., 7th Floor, Washington, D.C. 20036.

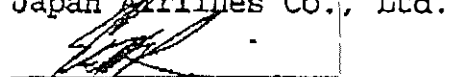
Sincerely,



Susan B. Geiger
Attorney for
Air Nauru


Joseph E. Schmitz
Attorney for
Asiana Airlines Co., Ltd.


William Karas
Attorney for
Japan Airlines Co., Ltd.



Elliott M. Seiden
Vice President - Law and
Government Affairs
Northwest Airlines, Inc.




William H. Callaway, Jr.
Attorney for
All Nippon Airways Co., Ltd.


R. Bruce Keiner, Jr.

R. Bruce Keiner, Jr.
Attorney for
Continental Micronesia, Inc.


William H. Callaway, Jr.
Attorney for
Korean Air Lines, Co., Ltd.


Shelby A. Longmuir
Vice President - Governmental
Affairs
United Air Lines, Inc.

The Honorable Carl T.C. Gutierrez
June 14, 1996
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Acknowledged and agreed:

Governor of Guam

By Mary Ann Candon

Its Counsel

Date June 17, 1996

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U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 18 1996

Roger Berliner, Esq.
Brady & Berliner
Suite 800
1225 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Berliner:

You have requested that Federal Aviation Administration (FAA) review the recently amended statute adopted by the legislature of Guam, a U. S. territory which is outside the customs territory of the United States, and proposed amendments to regulations authorizing the Government of Guam to establish and impose upon carriers a fee to be used to cover the cost of providing customs and agricultural inspection of air passengers and baggage arriving at the Antonio G. Won Pat Guam International Airport.

You explain that the Guam fee will be assessed on carriers based on the total annual cost of providing the service which will be divided by twelve and then be divided by the prior year's average monthly passenger volume to arrive at a per passenger cost. To recover this cost, a fee will then be collected by carriers from each revenue passenger arriving at the facilities of the Antonio G. Won Pat Guam International Airport Authority.

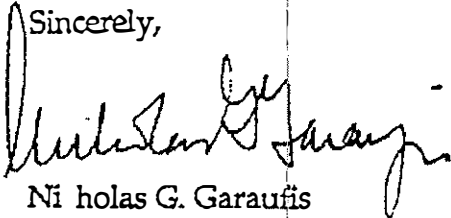
The inspections for which the fees are to be assessed are required largely because the U.S. Customs Service and U.S. Department of Agriculture, Animal and Plant Health Inspection Service have delegated to the Government of Guam authority to enforce certain Federal laws dealing with customs and agriculture matters. Guam, however, lies outside the customs territory of the United States. Under Federal user fee statutes, Guam does not possess authority through these agencies to collect from passengers the U.S. Customs and Department of Agriculture inspection user fees which currently are collected from international passengers arriving at airports within the customs territory of the United States. As a result, Guam must impose and collect its own fees independently.

The Guam fee will also be used to pay the cost of inspections conducted pursuant to the laws of Guam. These laws place Guam in a position analogous to that of a foreign government which requires similar inspections of passengers entering its territory.

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Based upon the circumstances described above, the FAA concludes that the fee established by the Guam statute and implementing regulations, copies of which you provided to us, does not violate the Anti-Head Tax Act, 49 U.S.C. §40116.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nicholas G. Garaufis", written over a vertical line.

Nicholas G. Garaufis
Chief Counsel



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 18 1996

Roger Berliner, Esq.
Brady & Berliner
Counsel for Guam
1225 19th St NW, Suite 800
Washington, DC 20036

Dear Mr. Berliner:

This is a follow-up to your inquiry of the Federal Aviation Administration regarding the recently amended statute adopted by the legislature of Guam, which is outside the customs territory of the United States, and proposed amendments to regulations authorizing the Government of Guam to establish and impose a fee to cover the cost of providing customs and agricultural inspections of air passengers and baggage arriving at the Antonio G. Won Pat Guam International Airport. You have asked for this office's opinion on whether, consistent with our enforcement policy regarding price advertising, carriers may separately list the Guam fee in their fare advertisements and tickets.

As outlined in the FAA's letter, the Guam fee will be assessed on air carriers based on the total annual cost of providing the service which will be divided by twelve and then be divided by the prior year's average monthly passenger volume to arrive at a per-passenger cost. To recover this cost, a fee will be collected by carriers from each revenue passenger arriving at the facilities of the Antonio G. Won Pat Guam International Airport Authority.

The inspections for which the fees are to be assessed are required largely because the U.S. Customs Service and U.S. Department of Agriculture, Animal and Plant Health Inspection Service, have delegated to the Government of Guam authority to enforce certain Federal laws dealing with customs and agriculture matters. Since Guam lies outside the customs territory of the United States, under Federal user fee statutes Guam does not possess authority through these agencies to collect from passengers the U.S. Customs and Department of Agriculture inspection user fees which currently are collected from international passengers arriving at airports within the customs territory of the United States. As a result, Guam must impose and collect its own fees independently.


EXHIBIT "G"

In the Enforcement Office's view, Guam is acting effectively as an agency of the Federal government to enforce certain Federal customs and agricultural inspection statutes. In this regard, we note that pursuant to appropriate law, the U.S. Customs Service designates certain employees of Guam's Customs and Quarantine Division as U.S. Customs agents to perform U.S. Customs duties.

Guam's status as a U.S. territory outside the customs territory of the United States, however, requires that the Government of Guam separately assess a fee to finance the inspections undertaken pursuant to Federal law. As a result, in connection with carrier fare advertisements and ticketing, the Enforcement Office would consider the Guam Customs and Agricultural inspection fee to be the functional equivalent of Federal customs and agricultural user fees. In addition, because Guam lies outside the customs territory of the United States, the Guam fee is also analogous to the customs inspection fees levied on passengers by foreign governments.

The Enforcement Office has, as a matter of enforcement policy, permitted carriers to state separately in fare advertisements any charges that are imposed or approved by a government on a per-passenger basis, such as customs, immigration, or agriculture inspection ticket surcharges, international departure taxes and security and passenger facility ticket surcharges, only if such fees are clearly noted elsewhere in the advertisement and their amount stated. See, e.g., Orders 96-1-13, 93-4-40 and 92-10-41. From an enforcement policy standpoint, for the reasons discussed above, the Guam fee would fall within the rationale of the cited orders. The Department would, as a result, consider fare advertising which lists the Guam fee separately from the price of air transportation to be consistent with the enforcement policy so long as the total amount of the fee is contained in the advertisement or solicitation materials. Similarly, we would not consider the listing of the Guam fee separately on a ticket to be a prohibited unfair or deceptive practice so long as the total price paid by the consumer is also listed.

Sincerely,



Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

AMENDED INTERIM RULES & REGULATIONS

(Customs, Agriculture, And Quarantine Inspection Service Charge)

- PURPOSE:** To carry out the provisions of Title XLIV, Chapter II, Sections 47143 through 47151 of the Government Code of Guam and establishing guidelines by which Customs, Agriculture, and Quarantine Inspection Service Charges and their requirements are applied, assessed, and executed.
- AUTHORITY:** Promulgated pursuant to Public Law 23-45, Title XLIV, Chapter II, Sections 47143-47151 of the Government Code of Guam.
- SCOPE:** These rules and regulations shall govern procedures, requirements, and applications of the Customs, Agriculture, and Quarantine Inspection Service Charges and parties thereto involved.

I. DEFINITIONS

Whenever in these rules and regulations the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

- | | | |
|------------------------|---|--|
| Agency | - | The Customs and Quarantine Agency of the Government of Guam. |
| agent | - | A person or party who is authorized to act for or on behalf of another. |
| arrival | - | those persons, passengers, aircraft, vessels, and/or cargo entering the Territory of Guam from a place outside. |
| cargo | - | merchandise or goods entered into the Territory of Guam from a place outside, including passenger baggage using Customs, Agriculture, and Quarantine Inspection services at a cargo service charge facility. |
| carrier(s) | - | vessels, aircraft, and/or their legal representative who engage in the transportation of crew, passengers and/or cargo, whether or not for a fee. |
| carrier bill of lading | - | a written receipt given by a carrier for goods accepted for transportation, and used for the purpose of entering consignments of cargo into the Territory of Guam and obtaining clearance by the service agencies. |

collector	-	shall mean the Customs and Quarantine Agency, the Antonio B. Won Pat Guam International Airport Authority, or their agents.
consignee	-	the person entering consignments of cargo into the Territory of Guam, whether or not acting as an agent on the behalf of others, and who is responsible for processing such cargo through Guam border clearance procedures.
consignment	-	a particular shipment or unit of goods destined for an identifiable person for final sale or custody, whether or not entered by an agent or among other consignments under one carrier bill of lading.
consolidated consignments	-	two or more consignments of cargo consolidated under one carrier bill of lading.
crew members	-	those persons who are directly connected with the operation or navigation of an arriving carrier, and who are identified as crew members on an official General Declaration or Crew List.
Director	-	the Director of the Customs and Quarantine Agency.
entry	-	"entry" and its derivatives shall mean that time when documents and information are presented to the Customs and Quarantine Agency for inspection and/or clearance.
fiscal year	-	the operating year of the Government of Guam commencing from October 1 of each calendar year through September 30 of the following calendar year.
freight forwarder	-	any person in the business of entering cargo consignments into the Territory of Guam on the behalf of others for a fee, and who assumes responsibility for processing those consignments through general border clearance procedures as part of that service.
Fund	-	the Customs, Agriculture, and Quarantine Inspection Services Fund.
GIAA	-	Antonio B. Won Pat Guam International Airport Authority.

GIAT	-	The Antonio B. Won Pat Guam International Air Terminal, the Commuter Terminal, and all other airport lands and facilities owned or controlled by the GIAA.
house bill of lading	-	an internal shipping document commonly used by freight forwarding or similar companies which identifies the ultimate consignee of a particular cargo consignment for which entry is being made.
importer(s)	-	those persons directly connected with the entry of cargo into the Territory of Guam from a place outside. This person may be the carrier, consignee, freight forwarder, or the owner of a particular consignment of cargo.
In-transit cargo-consignments	-	those consignments of cargo identified by the carrier bill of lading as destined for a port other than Guam.
In-transit sea passengers	-	those sea passengers identified by the carrier manifest as destined for a port other than Guam.
monies	-	all monetary payments and/or proceeds of the Customs, Agriculture and Quarantine Inspection Service Charges and/or late payment penalties collected or received by virtue of Title XLIV, Chapter II, Sections 47143, <u>et. seq.</u> of the Government Code of Guam and/or these rules and regulations.
party	-	those persons, businesses, or corporations subject to the requirements of Title XLIV, Chapter II, Sections 47143, <u>et. seq.</u> of the Government Code of Guam.
passenger	-	any person, excluding crew members, entering the Territory of Guam.
passenger baggage	-	the belongings and personal property entered into the Territory of Guam by an air or sea passenger.
person	-	includes individuals, businesses, partnerships, associations, corporations, and/or their agents.

rules and regulations	-	shall mean these rules and regulations established pursuant to Title XLIV, Chapter II, Sections 47143, <u>et. seq.</u> of the Government Code of Guam.
service agency	-	shall mean the Customs and Quarantine Agency and/or the Plant Protection and Quarantine Section, Department of Agriculture.
services	-	services shall mean Customs, Agriculture, and Quarantine Inspection Services.
service charge	-	those charges authorized pursuant to Title XLIV, Chapter II, Sections 47143, <u>et. seq.</u> of the Government Code of Guam and these rules and regulations where applicable.
Service Charge Facilities	-	those facilities approved and/or designated by the Agency to be used to provide the services set forth in these rules and regulations.
transshipment cargo consignments	-	those consignments of cargo identified in the carrier bill of lading as destined for Guam, but maintained, at all times, in a sterile bonded facility designated/approved by the Agency for ultimate export to a port other than Guam.
ultimate consignee	-	the ultimate person for whom a particular consignment of cargo is being entered into the Territory of Guam for final sale or custody.
vessel	-	every description of watercraft or other contrivance used as a means of transportation on water, but does not include aircraft.
week	-	shall mean the standard calendar week commencing from Sunday through Saturday.
work day	-	shall mean any day of the week, excluding Saturdays, Sundays, and Holidays.

II. SERVICE CHARGE FACILITIES

Service charge facilities shall include, but are not limited to, those facilities at the GIAT, the Commercial Port of Guam, the Agat Marina, the Agana Boat Basin, and other locations as may be designated by the Agency, that are used to provide the services set forth in these rules and regulations.

III. SERVICE CHARGES

A. Air Carrier Services.

1. Purpose and Adjustments. The Director is responsible for assuring, to the extent reasonably possible, that the service charges to be assessed to the air carriers by the Antonio B. Won Pat Guam International Airport Authority reflect as much as possible the actual costs associated with providing, maintaining, and operating the service charge facilities which relate to the air carriers' operations.

Accordingly, in connection with the Director's annual budget review of the service charges set forth in section IV.A of these rules and regulations, the Director shall make any necessary adjustments to the service charges so that those charges reasonably reflect the anticipated costs during the upcoming year of providing, maintaining, and operating the service charge facilities as those facilities relate to the air carriers' operations.

In connection with this annual review, the Director shall also promptly determine what, if any, under- or over-collection of service charges from the air carriers occurred during the previous year, and the Antonio B. Won Pat Guam International Airport Authority shall assess and collect any under-collected sums from, or credit any over-collected sums to, the air carriers as is appropriate. The additional funds assessed or collected, or the funds credited, shall be allocated fairly among the several air carriers on a prorated basis so that the total amount of money to be assessed and collected, or to be credited, shall be apportioned among the several air carriers in proportion to each carrier's respective percentage of the passenger volume subject to the service.

Nothing in these rules shall be construed to prohibit the Director from reviewing or adjusting the service charges, or to prohibit the Antonio B. Won Pat Guam International Airport Authority from revising the Airport Tariff Schedule or from assessing, collecting, or crediting the funds set forth in this section, more frequently than on an annual basis as may be deemed appropriate by the Director.

2. Charges. In order to calculate the service charges reasonably attributable to each air carrier for the service associated with that carrier, the Director shall determine the service charge to the several air carriers by the following methodology. The Director shall first estimate the current annualized costs of providing, maintaining, and operating the service charge facilities as they relate to air carrier operations, excluding air cargo operations, and then that annualized amount shall be divided by 12. The GIAA shall apportion such monthly amount among the several carriers in proportion to each carrier's revenue passenger volume subject to the services, times the cost per passenger determined below. Such monthly percentage of passenger volume shall be determined by reference to the monthly activity reports of passenger arrivals to be submitted to the GIAA by the air carriers. This apportionment methodology corresponds to the methodology used by the Agency, pursuant to a long-standing agreement with the air carriers, to apportion among the air carriers the Charges for Services of Customs and Quarantine Officers for the cost of using Agency personnel on an overtime basis.

Upon review and pursuant to this methodology, the Director has determined such total current annualized costs of providing, maintaining, and operating the service charge facilities as they relate to air carrier operations, excluding air cargo operations, is approximately \$7,136,848. Thus, the initial monthly charge attributable to all carriers is \$594,737.33 as of April 13, 1996 for which each air carrier shall be responsible for remitting to the GIAA its assessed pro rata service charge as determined by the GIAA under these rules and regulations. This monthly charge shall be converted to a cost per passenger for purposes of the apportionment methodology and air carrier ticketing and advertising by dividing the monthly charge by the average number of passengers during the preceding fiscal year.

B. Sea Passenger Inspection Services.

1. Charges. Subject to periodic review and adjustment by the Director as provided in Section IV.B.2 of these rules and regulations, each non-exempt sea passenger shall remit ten (10) U.S. dollars to the collector.

C. Cargo Clearance Services.

1. Charges. Subject to periodic review and adjustment by the Director as provided in Section IV.B.2 of these rules and regulations, each consignee shall remit the following service charge to the collector:

- a. At the GIAT, five (5) U.S. dollars for each non-exempt consignment of cargo, not to exceed twenty-five (25) U.S. dollars for consolidated consignments of non-exempt cargo entered under one carrier bill of lading; and
- b. At the Port Authority of Guam, five (5) U.S. dollars for each non-exempt consignment of cargo, not to exceed twenty-five (25) U.S. dollars for consolidated consignments of non-exempt cargo entered under one carrier bill of lading.

2. Required Documents and Information. Each consignee shall provide the Agency with the following documents and information when presenting cargo for Customs, Agriculture, and Quarantine clearances:

- a. Carrier Bill of Lading;
- b. Invoices and Packing Slip;
- c. Consignment Manifest (for consolidated consignments of cargo when required);
- d. House Bills of Lading (for consolidated consignments of cargo when required); and
- e. Other documents and/or information as may be necessary for making an accurate assessment of charges payable under this chapter.

IV. SERVICE CHARGE REVIEW

The Director will review service charges at least annually and make such periodic adjustments as may be necessary in accordance with these rules and regulations.

A. Air Carrier Service Charges.

- 1. Annual Budget Review. Each year the Agency and Department of Agriculture will prepare and submit an annual budget to the Legislature. No later than March 15 of each fiscal year, the Agency and

Department of Agriculture will provide the GIAA and each air carrier subject to the service charge with a draft of their budgets for air carrier services showing the total actual costs associated with providing, maintaining and operating the service charge facilities which relate to air carrier operations, together with a request for comment to be provided to the Agency within thirty (30) days.

2. Consultation. The Agency will hold at least one meeting called and scheduled by the Director with the Department of Agriculture, the GIAA, and the air carriers to discuss the draft budgets for air carrier services and to provide GIAA and the air carriers with an opportunity to comment on the proposed budgets prior to their submission to the Legislature. The Agency will also hold at least one meeting called and scheduled by the Director with the Department of Agriculture, the GIAA, and the air carriers to discuss a proposed periodic adjustment for air carrier services and to provide GIAA and the air carriers with an opportunity to comment on the proposed adjustments for providing, maintaining, and operating the service charge facilities. The Agency will give due consideration to the input and comments received from GIAA and the air carriers during the consultation process.
3. Final Decision. The Agency and Department of Agriculture have the sole responsibility and expressly reserve the right to make all final decisions with respect to their budgets for air carrier services, and any adjustments thereof, subject only to such administrative or judicial review as may be provided by law.

The Agency and the Department of Agriculture's decisions shall be consistent with and pursuant to these rules and regulations and in accordance with Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam. If, for any reason, the Legislature fails to approve the Agency's or the Department of Agriculture's budget for providing, maintaining, and operating the service charge facilities before the end of the current fiscal year, the service charge in effect shall continue in full force and effect until budgets are adopted and approved by the Legislature, unless a periodic adjustment has been made as provided in sub-paragraph 5 below.

4. Formal Notice of Service Charge Adjustments. The Director will deliver written notice of any adjustment of the monthly service charge to GIAA and each air carrier subject thereto. No service charge adjustments will take effect until the GIAA has amended the Airport Tariff Schedule and given notice thereof for a period of thirty (30) days in accordance with GIAA's Terminal Rules and Regulations. The amended Airport Tariff Schedule will set forth the adjusted annualized and monthly costs of customs, agriculture, and quarantine services to air carriers, and provide that each carrier will be assessed a proportionate share of the monthly costs based on its respective percentage of arriving passenger volume.
5. Periodic Adjustments. In the event that there is a significant increase or decrease in the anticipated costs of providing, maintaining, and operating the service charge facilities for air carrier services after budgets have been submitted to the Legislature and before conducting the annual review set forth in Section III.A.1 above, the Director may adjust the monthly facility service charge to air carriers so that the amount of the charge levied on air carriers by the GIAA will reasonably reflect anticipated actual costs of providing, maintaining and operating the service charge facilities. Written notice to the GIAA and air carriers of a proposed periodic adjustment shall coincide with the consultation process as provided in subparagraph 2 above. The adjusted service charge shall not be levied or assessed until GIAA has amended the Airport Tariff Schedule and given notice thereof in accordance with its Terminal Rules and Regulations.

B. Sea Passenger and Cargo Service Charges.

1. Annual Budget Review. Each year the Agency and Department of Agriculture will prepare and submit an annual budget to the Legislature showing the projected costs associated with providing, maintaining and operating the service charge facilities which relate to sea passenger and cargo operations.

2. Periodic Adjustment and Public Notice of Customs, Agriculture, and Quarantine Inspection Service Charge Adjustments. The Director may periodically adjust the service charges for sea passenger and cargo services so that such charges reasonably reflect the anticipated actual costs of providing, maintaining, and operating the service charge facilities as they relate to sea passenger and cargo operations. A schedule of the Customs, Agriculture, and Quarantine Inspection Service Charge will be posted, at all times, in the office of the Director. Adjustments to these service charges shall be made by the Director by amending the service charge schedule, and by posting public notice of the adjusted service charges in a conspicuous place within each sea passenger and cargo operations area at least forty-five (45) days prior to the effective date of the adjustment.

Nothing in these rules shall be construed to prohibit the Director from reviewing or adjusting the service charges for sea passenger and cargo services more frequently than on an annual basis.

V. EXEMPTIONS FOR CARGO AND SEA PASSENGERS

Each consignment of cargo and/or sea passenger arriving in the Territory of Guam under the following conditions are exempt from the Customs, Agriculture, and Quarantine Inspection Service Charge, and/or their inclusion in determining the amount payable under these rules and regulations:

1. Diplomats of Foreign Governments and their cargo consignments who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of such listing an individual may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or a diplomatic identification card issued by a foreign government.
2. Delegates to, or employees of, the United Nations, or any of its organizations who possess valid proof of their delegate or employee status, such proof to include possession of a United Nations Passport or visa, or a valid United Nations identification card, and their cargo.

3. Passengers and cargo consignments that have departed and returned to Guam without having touched another port, place, or craft outside of Guam.
4. Passengers and cargo consignments arriving due to an emergency when the original destination was other than a Guam port.
5. In-transit sea passengers, in-transit cargo consignments, and transshipment cargo consignments maintained, at all times, in a sterile bonded facility designated/approved by the Agency, and not using the Customs, Agriculture, and Quarantine Inspection Services.
6. Any cargo consignment that consists solely of documents with a total shipping weight of less than 1 kilogram.
7. Official cargo consignments of the U.S. Postal Service, U.S. Federal Government under a Government Bill of Lading, and/or Government of Guam Agency.
8. Human remains.

Nothing in these rules shall be construed to prohibit any of the persons or cargo consignments enumerated in this section from actually being subjected to the service as otherwise provided by law.

VI. ASSESSMENT, COLLECTION, and REMITTANCE

A. Antonio B. Won Pat Guam International Airport Authority. The GIAA shall assess and collect service facility charges, excluding cargo charges, from air carriers whose operations require services under Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations, and shall deposit all monies received with the Treasurer of Guam for credit to the Customs, Agriculture, and Quarantine Inspection Service Fund.

1. Assessment. The GIAA may bill air carriers for services on a monthly basis in accordance with applicable billing procedures used by the GIAA.

Upon the issuance of a billing, the GIAA shall provide the Director with a copy of such billing for record and accounting purposes.

2. Collection and Accountability. The GIAA shall collect applicable service charges and implement procedures as may be required for the receipt, control, and accounting of monies taken into its custody. Accounting procedures shall be adopted and maintained in accordance with generally accepted accounting principles applicable to airports. All records and receipts relative to this program shall be maintained separate and apart from other activities of the organization.

3. Deposit of Receipts. The GIAA shall coordinate remittance procedures with the Department of Administration, and shall guide itself by applicable Government of Guam requirements for these transactions.

4. Late Payment Penalties. The GIAA receiving or having outstanding service or other charges due in excess of thirty (30) days shall assess, collect, and deposit applicable late payment penalties from respective parties in accordance with its procedures consistent with these rules and regulations.

5. Compliance. The GIAA shall allow Customs and Quarantine Agency Personnel or their authorized representatives to verify the accuracy of the service charges assessed, collected and/or deposited, and to otherwise determine compliance with Section 47150, Title XLIV, Chapter 2 of the Government Code of Guam and these rules and regulations.

6. Reconciliation. The GIAA shall provide the Director with monthly statements identifying each billing issued during the reporting period inclusive of year-to-date aggregates of charges assessed, payments received, outstanding balances thereof, and deposits made.

Upon written request, the GIAA shall provide the Director with any information related to this program as may be required.

At the end of each year, the GIAA and the Agency shall reconcile the amount of service charges payable and received within the respective year.

B. Customs and Quarantine Agency. The Customs and Quarantine Agency, or its agent, shall assess and collect service charges, excluding air carrier charges, from those persons whose operations require services under Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations, and shall deposit all receipts with the Treasurer of Guam for credit to the Customs, Agriculture, and Quarantine Inspection Service Fund.

1. Assessments. The collector shall assess service charges upon applicable parties for the provision of services and shall implement internal procedures as may be required for this process.

2. Collection of Service Charges. The collector shall implement security and accounting procedures as may be required by law or deemed necessary in addition to those requirements provided herein for the collection of service charges.

a. Receiving Payments.

(1) Receiving and Control. Collectors shall establish the hours of operation and the locations where payments may be made, and shall implement procedures for the security and accountability of monies taken into their custody.

(2) Receipts and Records. The collector shall furnish each person from whom service charges were collected a receipt which identifies payment of the service charge, the date, the amount remitted, and that for which the payment is being made.

b. Accounting Requirements.

(1) Procedures. Collectors shall apply and guide themselves by current accounting procedures applicable to their organization and the Government of Guam.

(2) Maintenance of Records and Accounts. The collector shall maintain records of payments outstanding, due, received, and deposited, and shall maintain all records, ledgers, accounts, and monies separate and apart from all other records, ledgers, accounts, monies, and activities under the purview of their organization.

(3) Monthly and Other Statements. The collector shall prepare and submit monthly statements to the Director on or before the last work day of each month which identifies the total outstanding receivables, payments received, and payments deposited into the Customs, Agriculture, and Quarantine Inspection Services Fund during the reporting period as of the statement date, and any other information as may be required by the Director.

Upon written request, the collector shall immediately provide the Director with any information on the activity of the account as may be desired.

3. Remittance of Funds Received. All monies received shall be deposited with the Treasurer of Guam for credit to the Customs, Agriculture, and Quarantine Inspection Services Fund within five (5) working days of receipt. Collectors making such deposits shall be guided by applicable Government of Guam procedures of the Department of Administration for such transactions.

4. Late Payments. Upon receiving or having outstanding charges due in excess of thirty (30) days from the applicable due date, the collector shall assess and collect applicable late payment penalties, and shall maintain records thereof, from each respective party consistent with the requirements outlined in Section VII of these regulations.

5. Compliance. Collectors shall allow Customs and Quarantine Agency Personnel or their authorized representatives to verify the accuracy of the service charges assessed, collected and/or deposited, and to otherwise determine compliance with Section 47150, Title XLIV, Chapter 2 of the Government Code of Guam and these rules and regulations.

6. Reconciliation. At the end of each year, collectors and the Agency shall reconcile service charges payable and received from applicable parties within the respective year.

C. Agents. Agents acting on behalf of the GIAA or the Agency shall guide themselves by these rules and regulations, the requirements of their respective supervising agency, and any other law which may be applicable.

Agents shall make available to their supervising organization any records, reports, and information under their purview concerning the Customs, Agriculture, and Quarantine Inspection Service Charges for the purposes of these rules and regulations and final disposition as may be required.

VII. PAYMENTS AND PENALTIES

Payments subject to the provisions of Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations are due on the date the services are rendered, unless otherwise provided herein. A penalty shall be assessed in addition to applicable charges in the event that a payment becomes thirty (30) days overdue.

A. Payment Requirements.

1. Payments Due. Except for payments which are arranged on a billed basis by the collector under Section VII.A.2, payments of service charges become due on the date services are rendered.

2. Billed Payments Due. Payments for service charges arranged on a billed basis become payable as of the billing date.

3. Currency. All transactions and payments shall be made with U.S. currency, made with a personalized/certified check or money order payable in United States dollars through an on-island United States banking institution to the Antonio B. Won Pat Guam International Airport Authority or to the Treasurer of Guam where applicable, or other payment arrangement authorized by the collector.

B. Penalties.

1. Late Payments. In the event that a person or party exceeds thirty (30) days in paying the Customs, Agriculture, and Quarantine Inspection Service Charges from the date due, an interest charge of ten percent (10%) per annum shall be assessed upon the responsible party for applicable outstanding balances until otherwise paid in full.

2. Non-Payment. Any person or party late in paying any service charge or late payment penalty due under these rules and regulations may be required by the GIAA, the Agency, or its agents, to make immediate payment for subsequent services rendered.

C. Notices.

In the event that a person or party is delinquent in paying any charges or penalties under Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam or these rules and regulations for any reason, the collector shall issue a notice of such delinquency to the responsible party's last known address identifying, at a minimum, the date in which the subject amount was payable, the amount in arrears, and the penalty for defaulting on payments.

VIII. REIMBURSEMENTS and FUND ALLOCATIONS

The Agency, GIAA, and their agents, except as provided in subparagraph A.2 below, shall remit and deposit all funds received and collected pursuant to Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations with the Treasurer of Guam for credit to the Customs, Agriculture, and Quarantine Inspection Service Fund.

A. Antonio B. Won Pat Guam International Airport Authority.

Upon appropriation by the Legislature and certification by the Director, the GIAA shall be entitled to reimbursement for reasonable administrative costs directly connected with assessing, collecting, and remitting service charges and penalties under Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations. Such reimbursement shall be provided in the following manner:

1. For the period up to September 30, 1997, the GIAA shall submit to the Agency no later than July 1, 1996 a statement of costs and expenditure report identifying each cost and expenditure incurred, and to be incurred, during the billing period; and

2. For each fiscal year thereafter, the following reimbursement procedure shall apply:

(a) Projected Budget. The GIAA shall submit to the Agency on the Fifteenth day of January a projected budget in Government of Guam budget format reflecting anticipated administrative costs to assess, collect, and remit applicable charges under Title XLIV, Chapter II, Sections 47143, et. seq. of the Government Code of Guam and these rules and regulations during the period of October 1st through September 30th of the following Government of Guam Fiscal Year;

(b) Advisory. Upon appropriation by the Legislature, the Director shall advise the GIAA of the authorized reimbursement funding approved by the Legislature for expenditure in the following fiscal year.

(c) Deduction from Service Charge Proceeds. The GIAA is authorized to deduct and retain each month the sum equal to one-twelfth (1/12) of the amount of reimbursement authorized for the same Fiscal Year, pursuant to the immediately preceding subparagraph (b), from the service charge proceeds collected by GIAA from air carriers, as full reimbursement for the costs of assessing, collecting, and remitting applicable charges pursuant to these rules and regulations.

(d) Additional Expenses, Court Costs, and Attorneys' Fees. The GIAA may request reimbursement for additional or extraordinary costs incurred in the assessment and collection of service charges pursuant to these rules and regulations, and any enforcement actions or proceedings for such collection, including, but not limited to, court costs and attorneys' fees, by submitting a verified statement for such expenses within thirty (30) days after the same are incurred to the Director of Customs. Upon review and verification, the Director will reimburse those cost for which funds are appropriated by the Legislature, which costs shall be subject to recovery from the air carriers by adjustment of the service charges pursuant to Section III of these rules and regulations.

B. Customs and Quarantine Agency. All operating expenses and encumbrances of the Customs and Quarantine Agency shall be paid by the Fund upon appropriation by the Legislature, and certification by the Director.

1. Customs and Quarantine Agency Annual Budget. The Agency shall prepare and submit an annual budget each fiscal year in accordance with budget procedures applicable to the Government of Guam.

2. Reimbursement Appropriations. The Agency shall include in its annual budget request projected reimbursements for the cost of collecting and remitting service charges by authorized parties.

C. Plant Protection and Quarantine Section, Department of Agriculture. The Department of Agriculture shall prepare and submit to the Guam Legislature an annual budget request which identifies, separate and apart from all other costs of the Section and Department, the projected costs for providing applicable Plant Protection and Quarantine services at the GIAA and at the Port Authority of Guam. The Department of Agriculture shall also provide the Director with its Plant Protection and Quarantine projected budget on or before March 1 of each fiscal year together with a breakdown showing the allocation of costs attributable to the different service charge facilities for the purpose of evaluating service charges required under Section VI of these rules and regulations. The Fund, upon appropriation by the Legislature, shall provide funding for such activities in accordance with applicable Government of Guam procedures.

IX. SEVERABILITY CLAUSE

If any provision of these rules and regulations or the application thereof upon any person, party, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules and regulations which can be given effect without the invalid provision or application, and, to this end, the provisions of these rules and regulations are severable.

The aforementioned Rules and Regulations are hereby promulgated by the Director of the Customs and Quarantine Agency this _____, 1996 pursuant to Section 47149 of the Government Code of Guam.

John M. Quinata, Director of Customs

Calvin Halloway, Attorney General of Guam

Carl T.C. Gutierrez, Governor of Guam